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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEANETTE LYNN THOMAS,

Defendant and Appellant.

A124216

(San Mateo County
Super. Ct. No. MH473423)

The trial court found defendant Jeanette Lynn Thomas incompetent to stand trial, committed her to Patton State Hospital and authorized the involuntary administration of antipsychotic medication if deemed necessary by the medical staff. On appeal, defendant challenges only the authorization for involuntary administration of antipsychotic medication, and the Attorney General concedes error. We therefore vacate the provisions of the trial court's order finding defendant incapable of consent and authorizing involuntary administration of antipsychotic medication, and affirm the commitment order as modified.

FACTUAL AND PROCEDURAL BACKGROUND

On July 14, 2008, defendant was charged with vehicle theft (Veh. Code, § 10851, subd. (a)), receiving a stolen vehicle (Pen. Code, § 496d, subd. (a)),¹ receiving stolen property (§ 496, subd. (a)), battery against a peace officer (§ 243, subd. (b)), and resisting a peace officer (§ 148, subd. (a)(1)).

¹ All further statutory references are to the Penal Code unless otherwise indicated.

On July 24, 2008, defendant's counsel declared some doubt as to her competence. The court suspended criminal proceedings and appointed two mental health experts. In their reports, both experts opined defendant was not competent to stand trial.

At the competency hearing on August 26, 2008, the parties submitted the matter of defendant's competence on the doctors' reports. The court found defendant incompetent to stand trial and set the matter for a placement recommendation.

The Golden Gate Conditional Release Program recommended the court commit defendant to Patton State Hospital. At the placement hearing, the court asked defendant and her counsel whether she consented to the administration of medication. Defendant, and her counsel, replied that she did consent. Without explanation, the court stated: "And for some reason, should you be inclined, I'm going to order, under the circumstance I don't think this will be an issue, but if it is, the facility [will] be authorized to administer antipsychotic medication to [defendant] involuntarily as prescribed by a treating psychiatrist pursuant to [section] 1370, [subdivision] (a)(2)(B)(iii)."

The court ordered defendant committed to Patton State Hospital for a maximum term of three years. Despite defendant's on-the-record consent, the commitment order did not include findings that defendant "consents to the administration of medication" or that "[t]he treatment facility is authorized to administer antipsychotic medication to defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent." (Emphasis omitted.) Instead, the order contains a mark in the box next to the finding that "[d]efendant lacks capacity to make decisions regarding antipsychotic medication and that defendant's mental disorder requires medical treatment with antipsychotic medication." The order further specifies, "[t]he treatment facility is authorized to administer antipsychotic medication to defendant involuntarily as prescribed by a treating psychiatrist pursuant to [section] 1370, [subdivision] (a)(2)(B)(iii)." (Emphasis omitted.)

ANALYSIS

As stated at the outset, defendant does not challenge the commitment order except with respect to the finding she lacked capacity to consent and authorization for involuntary administration of antipsychotic medication. She contends the finding she

lacked capacity to consent and authorization of involuntary medication are not supported by substantial evidence. She also contends the statutory provisions authorizing involuntary medication are not applicable where, as here, defendant consents to the administration of medication. Finally, she contends involuntary administration of antipsychotic medication violates her federal due process rights and state constitutional right to privacy.

The Attorney General concedes error on the ground defendant, with the advice of her counsel, *consented* to the administration of medication.

At a commitment hearing, the court should decide whether the defendant lacks capacity to consent and should authorize involuntary antipsychotic medication on that ground, *only if the patient does not consent*. (See § 1370, subd. (a)(2)(B)(ii).) When, as here, a defendant consents, the correct procedure is to state in the commitment order that “antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant’s consent.” The order also should specify that if the defendant withdraws consent, she shall be returned to court for a hearing as to whether antipsychotic medication shall be involuntarily administered. (§ 1370, subd. (a)(2)(B)(i).) Should that be required, the applicable procedures concerning the defendant’s return to court are set forth in section 1370, subdivision (a)(2)(C).

CONCLUSION

The provisions of the commitment order finding “[d]efendant lacks capacity to make decisions regarding antipsychotic medication and that defendant’s mental disorder requires medical treatment with antipsychotic medication” and authorizing the treatment facility “to administer antipsychotic medication to defendant involuntarily as prescribed by a treating psychiatrist pursuant to [section] 1370, [subdivision] (a)(2)(B)(iii)” are vacated. The trial court is directed to check the boxes on the order finding “[d]efendant, after receiving advice from counsel, consents to the administration of medication” and authorizing the treatment facility “to administer antipsychotic medication to defendant as prescribed by a treating psychiatrist pursuant to the defendant’s consent to such treatment.” As modified, we affirm the commitment order.

Banke, J.

We concur:

Marchiano, P. J.

Margulies, J.